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BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL TO THE BOARD OF APPEALS

In re Application of: Gerald Owen, et al.)
Serial No.: 10/689,750)
Filed: 10/22/2003)
Title: **CUSTOMIZED LURE SYSTEM**)

Date: February 1, 2005
Group Art Unit: 3644
Examiner: Smith, K.S.

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

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AND INTERFERENCES

BRIEF ON APPEAL

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

This is an appeal from the Final Rejection, dated 10/21/2004 for the above identified application.

REAL PARTY IN INTEREST

The party(ies) named in the caption of this brief are the real parties of interest in this appeal.

RELATED APPEALS AND INTERFERENCES

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The present application is a Continuation in Part of U.S. Serial No. 10/060478, also currently under appeal and before the Board for consideration. There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATUS OF CLAIMS

Currently, claims 1-10 are pending and were all finally rejected, which is herein under appeal.

STATEMENT OF AMENDMENTS

There have been no supplemental amendments filed after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Referring to the specification page 6, line 7 through page 10, line 11 and FIG. 1-5, a modular hookless lure system is disclosed utilizing a lure module element 10 as the foundation of a system of interchangeable, adaptable elements that allow various lure functionality to be incorporated, in situ, by the fisherman between any existing line and any selected hook of choice. In greater detail, each lure module element 10 has a proximal end opposite a distal end, and is formed of a tie eye 12 at the proximal end and a snap swivel 14 at the distal end. In between, and connecting the tie eye 12 to the snap swivel 14 is a lure means 16. Various elements and devices are known to lure

game fish, and it is anticipated that many type of structural elements can form and create a luring attraction though the use of sound, sight, smell, vibration, or combinations thereof. However, it is of a particular importance to the practice of the present teachings that a *variety* of lure means devices, including various functional elements, be available among a plurality of such lure module elements 10. A selection of particular functional elements shall be described in greater detail below. Such ability to change, mix, match or combine such lure module elements 10 provides a fishing lure system with enhanced features when compared to conventional fishing lures.

As exemplary of the teachings of the present invention, FIG. 2 depicts a lure module element 10 shown having the tie eye 12 conventionally affixed to a fishing line 18 in any conventional manner, and having the snap swivel 14 attachable for use with an otherwise conventional hook 20. For purposes of contrast, FIG. 3 depicts the same configuration of lure module element 10 shown attached to an alternate hook 22. Such capability allows the user to attach any hook of choice to the lure by attachment to the snap swivel 14, while at the same time allowing removal of the hook and replacement by an alternately selected hook in an easy manner. This is done without removing the lure element 10 from the line 18 or otherwise disturbing the lure element 10 at all.

Similarly, FIG. 4 depicts a lure module element 10 wherein the snap swivel 14 is connectable to a leader line and hook combination 24 wherein the hook 20 is provided already attached to a length of leader line 25 and terminated to a connection eyelet 26. Such a capability allows the user to switch between conventional hooks 20 and leader style hook combinations 24 by attachment to the snap swivel 14, without removing from lure 10 from the line 18 or otherwise disturbing the lure element 10 at all.

Finally, in that it is anticipated that various modular lure elements 10 will each support different particular functional elements that are directed to either sight, sound or vibration functions, it is an integrally anticipated within the scope of the present invention that any number or combinations of modular lure elements 10 can be used together, as shown in FIG. 5. Such a series of modular lure elements 10 are formed by attachment of the tie eye 12 of a second modular lure element 10 to the snap swivel 14 of the first modular lure element 10. In this manner, the snap swivel 14 of the second modular lure element 10 is thereafter used for connection to any selected hook of choice 20.

As described above, the manner of use, enablement and scope of the preferred embodiment are described in which each of a plurality of modular lure elements 10 are anticipated as being used in concert as a modular hookless lure system. The use and teachings herein are not anticipated as being dependant upon a specific configuration of any particular lure means 16. However, by way of example and enablement, and not as a limitation, it is felt that the lure means should include a selection of various components as selected from those shown in FIG. 6, including a clevis 30 of any type that would thread onto a 0.030 gauge wire and support a spoon, or blade 32 such as to form a spinner when drawn through the water. In that the differences in sizes of spoons or blades 32 can generate different frequencies of vibration or differences in motion, it is important to have lure element modules incorporating different such sizes to provide the user with the ability to change functional attraction means by replacing or combining such spinners. Further, it is anticipated that the blade surface 34 of different spoons or blades 32 can have different visual impressions, such as glossy or shiny, dull or dark,

bright and colorful, metallic, etc. to allow the user with the ability to change functional attraction means by replacing or combining such spinners. Also anticipated are a variety of size and colored beads 36 and weighted bobs 38. Also anticipated is the use of snap swivels 14 of various capacity, i.e. different strengths such as to support tensile strengths of differing limits.

The heart of the invention remains an assembled lure module element 10 that provides a lure line terminated on one end by a snap swivel 14. The flexibility of this system allows the angler to adjust the vibrating and flashing mechanism during trolling. Additionally, various leader lines and hooks can be attached to the snap swivel 14 by the angler in the field to attract and catch fish as well. However, the presence or variation of all these components to the assembled customizable lure system is not essential. The essential component of the assembled configuration is the presence of a snap swivel on one end, and the absence of a hook.

As designed, customizable lure system has many features that make it beneficial to both consumers and manufacturers. It is utilized like any other lure, allowing the spinning motion to cause vibration and flashing that aid in attracting fish to the bait of choice. Its uniqueness when compared to other lures is that any of these various configurations can be modified by the user to allow the user to catch any size or species of fish under any conditions with the use of a single customizable lure system. As such, the lure is allowed to run deep or near surface of water by utilizing different lure elements that can be added to the end of the snap swivel 14 by user in field. Likewise, the user can easily change hooks, for example, to better enable him to attract and catch varying sizes and species of fish. By varying the size and type of elements

attached to the snap swivel 14, the angler increases the chance of a strike and the likelihood of catching more fish. Hooks attached by the user via leader line, or multiple hooks therein attached, can be added to the invention by suspending them from the snap swivel on the customizable lure body.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The Examiner rejected claims 1 through 10 under 35 U.S.C. 103(a) as being unpatentable over Tallerico, U.S. Patent No. 5,327,670.

ARGUMENT

1. Rejections under 35 U.S.C. 103(a)

The examiner respectfully rejected Claims 1 through 10 under 35 U.S.C. § 103(a) as being unpatentable over Tallerico.

In undertaking a determination of whether a reference, or a combination of references, renders a claim(s) obvious under 35 U.S.C. § 103(a), the examiner must show that the reference or combination of references teach or suggest every element of the claim(s) in question. MPEP § 706.02(j).

To clarify, the motivation for the present invention in the form of a universal, customizable lure stems from the variable nature of fishing itself and, in particular, the variations in different type of fish activity at different times. If certain types of fish are active in a manner beneficial to a fisherman, it is not possible to take advantage of this unless the equipment provided to attract such fish, i.e. the lures, can be adapted

immediately to compensate for this activity. If a user is unprepared for adapting the equipment, then no such advantage can be had. The present embodiment provides a lure that is adaptable and customizable that allows for such changes to be made at the fishing site itself and by the user.

The cited reference discloses only a trolling lure, not capable of being cast and not modular. While it is possible to configure the present invention to creating a lure for trolling, the reverse is not necessarily, i.e. the Tallerico device cannot be used to create the present invention.

Therefore, the advantages and features of the present invention are neither anticipated nor disclosed by either of the above cited references.

Therefore, in light of the numerous differences between Tallerico and the present invention, the Examiner's rejection of claims 1-10 under 35 U.S.C. 103(a) is inappropriate.

Based upon the above arguments, it is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument application wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. 103, the cited references must teach every element of the claimed invention. Further, if a combination is cited in support of a rejection, there must be some affirmative teaching in the prior art to make the proposed combination. See Orthopedic Equipment Company, Inc. et al. v. United States, 217 USPQ 193, 199 (Fed. Cir. 1983), wherein the Federal Circuit decreed, "Monday Morning Quarter Backing is

quite improper when resolving the question of obviousness." Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

"[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. When the prior art references require a selective combination to render obvious a subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985). There is nothing in the prior art or the Examiners arguments that would suggest the desirability or obviousness of making a support apparatus for rollout awnings according to the present invention. Uniroyal, Inc. v. Rudkki-Wiley Corp., 837 F.2d 1044, 5 USPQ 2d 1432 (CAFC 1988). The Examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old

elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

Respectfully submitted,



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CLAIMS APPENDIX

1. (Original) A modular hookless lure system comprising:
a plurality of lure module elements, each said lure module elements having a proximal end opposite a distal end, a tie eye affixed at said proximal end and a snap swivel affixed at said distal end and lure means there between;
wherein each said tie eye can be attached to any existing fishing line and any said snap swivel can be removably attached to any selected hook of choice or any other said tie eye.
2. (Original) The modular hookless lure system of Claim 1, wherein said lure means is selected from the group of functional elements for creating a game fish attraction through the use of sound, sight, smell, or vibration.
3. (Original) The modular hookless lure system of Claim 2, wherein said functional elements are selected from the group comprising: clevis; spoon or blade; beads; and weighted bobs.
4. (Original) A modular hookless lure system formed by a plurality of lure module elements, wherein at least one of said lure module elements comprises:
a proximal end opposite a distal end and separated by a wire,
a tie eye affixed at said proximal end for attachment to any existing fishing line;
lure means supported by said wire; and

a snap swivel affixed at said distal end, wherein said snap swivel can be removably attached to any selected hook of choice or any other said tie eye.

5. (Original) The modular hookless lure system of Claim 4, wherein said lure means includes at least one functional element for creating a game fish attraction.

6. (Original) The modular hookless lure system of Claim 5, wherein said lure means generates a luring stimulus selected from the group comprising: sound, sight, smell, and vibration.

7. A method of providing interchangeable fishing lures that can be modified in-situ, said method comprising:

- a. selection of a plurality of interchangeable, adaptable elements that allow various lure functionality to be incorporated by the fisherman between any existing line and any selected hook of choice;
- b. Attachment of any said interchangeable, adaptable element to an existing fishing line; and
- c. Selection of a hook; and
- d. Attachment of said hook to said adaptable element.

8. The method of Claim 7, wherein said interchangeable, adaptable element comprises:

a proximal end opposite a distal end and separated by a wire,

a tie eye affixed at said proximal end for attachment to any existing fishing line;
lure means supported by said wire; and
a snap swivel affixed at said distal end, wherein said snap swivel can be
removably attached to any selected hook of choice or any other said tie eye.

9. The method of Claim 8, wherein said lure means includes at least one functional element for creating a game fish attraction.

10. The method of Claim 9, wherein said lure means generates a luring stimulus selected from the group comprising: sound, sight, smell, and vibration.

7. (Canceled)

8. (Original) The disposable sink liner of Claim 1, wherein said sink liner further comprises a drainage stopper for collecting and holding liquid.

9. (Previously Amended) The disposable sink liner of Claim 8, where said drainage stopper further comprises a mechanism for extracting said stopper from said drainage opening, thereby facilitating the release of liquid from said disposable sink liner into the residential plumbing.

10. (Previously Amended) The disposable sink liner of Claim 9, wherein said

mechanism is a rope or chain.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDING

None